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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Implementation of Cable Act
Reform Provisions of the
Telecommunications Act of 1996

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CS Docket No. 96-85

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COMMENTS OF THE CABLE TELECOMMUNICATIONS ASSOCIATION

Submitted By

Stephen R. Effros
James H. Ewalt

CABLE TELECOMMUNICATIONS
ASSOCIATION
3950 Chain Bridge Road
P.O. Box 1005
Fairfax, VA 22030-1005
(703) 691-8875

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COMMENTS OF THE CABLE TELECOMMUNICATIONS ASSOCIATION

The Cable Telecommunications Association ("CATA"), hereby files comments in the above-captioned proceeding. CATA is a trade association representing owners and operators of cable television systems serving approximately 80 percent of the nation's more than 66 million cable television subscribers. CATA files these comments on behalf of its members who will be directly affected by the Commission's action.

In cooperation with the efforts of the Cable Services Bureau to reduce the sheer weight of pleadings associated with rulemakings spawned by the Telecommunications Act of 1996, CATA is attempting to keep its comments as brief as possible. Indeed, in several of the more recent proceedings CATA has not filed at all, after ascertaining that others were making appropriate arguments before the Commission. In the instant proceeding, we concur with the comments of the National Cable Television Association ("NCTA") and FrontierVision, Operating Partners, L.P. We wish to give particular emphasis to the following issues:

Effective Competition - Comparable Programming. CATA agrees with the Commission's approach in its interim procedures that comparable programming should include some broadcast channels. We disagree, however, with the Commission's tentative decision not to consider satellite delivered broadcast channels as broadcast channels for the purpose of determining comparability. The Commission acknowledges these "superstations" as broadcast stations for purposes of complying with the broadcast regulations. Superstations must be licensed, are subject to renewal criteria, must comply with the full panoply of technical regulations, EEO requirements, political broadcasting requirements, and other public interest obligations. That these stations are delivered to cable systems by satellite rather than through a microwave network and are carried by many cable systems is irrelevant.

Delivery of Broadcast Signals. The Commission's treatment of broadcast programming viewed by MMDS subscribers seems appropriate. As long as the MMDS operator takes any active step to deliver broadcast programming, whether by advertising or promotion, direct delivery, "marrying" a subscriber's broadcast antenna feed with MMDS delivered programming, or installing A-B switches enabling the subscriber to use a broadcast antenna and the MMDS system, the MMDS subscriber must be considered a recipient of "comparable programming." What counts is the total package of programming.

Service In Any Portion Of The Franchise Area. Of particular concern is the Commission's suggestion that in order for effective competition to exist (when service is offered by a LEC or its affiliate), the offer of service must be made to some portion of a cable system's franchise area specified by Commission regulation. No such suggestion is

found in the Act or its history. It is very clear from the various effective competition criteria originally adopted in the Cable Act of 1992 (and thoroughly reviewed in the Telecommunications Act of 1996) that the Congress is perfectly capable of providing specific measurements of when it deems effective competition to occur. Obviously, in adopting the new effective competition criterion in the 1996 Act, the Congress has determined that effective competition will exist when service is offered to any part of a franchise area. It did not provide the Commission with measurement criteria to specify how much of the franchise area, and it certainly did not direct the Commission to begin a proceeding to establish any such criteria. CATA strongly agrees with the concurring opinions of Commissioners Quello and Ness, both of whom found the Act as written to be perfectly clear.

Definition of Affiliate. CATA generally endorses the Commission's tentative determination that the Title I definition of "affiliate" should be adopted for purposes of the new effective competition test. CATA believes that the application of the definition is critical. The Commission should look both at the policy behind the new effective competition test as well as at public statements made by parties seeking to provide competitive video services.

CPST Rate Complaints. Although the Congress has given little guidance, its intent is clear. Triggering entire federal regulatory mechanisms simply on the basis of a single complaint has proved excessive. Congress intended local franchising authorities to act as a filter for CPST rate complaints, not merely a passive conduit. Thus we recommend that regardless of the number of complaints received by local franchising authorities, the Commission's new rules and any form required to be filed should require an affirmative

statement by the franchising authority that it believes the rate in question does not comply with the Commission's rules. Such a preliminary determination should not require any additional time on the part of the franchising authority.

Small Cable Operators - Definition of Affiliate. Although CATA generally supports the Commission's proposal that a 20 percent ownership interest be considered affiliation for purposes of determining whether a system is eligible for small system treatment, we concur with the comments filed on behalf of FrontierVision Operating Partners, L.P. that a passive ownership interest by an investor should not make an otherwise small system ineligible. Of primary importance in the case of small systems is the character of the ownership interest. A considerable amount of Commission activity over the last several years has been devoted to a deregulatory effort in order to make it possible for small systems to obtain the financing needed to remain competitive with other multi-channel video providers. It is important that in determining the level of affiliation that, in the aggregate, would pass the 20 percent level, the Commission should not create disincentives to such investment. If a small system attracts a lender who demands an equity interest in the company (not an uncommon occurrence), the Commission should not look at the amount of stock ownership, as much as it should examine the degree of control, if any, that the lending institution may have over the daily activities of the system. A system with a passive ownership interest by an institutional lender should be permitted to remain "small." Otherwise, the Commission will be undoing much of its creative deregulatory work and placing small systems at a competitive disadvantage in the marketplace. Clearly, it has been the Commission's intent and the intent of the Congress as well, to remove regulatory burdens from small cable systems precisely in order to encourage

investment of capital in small systems. Application of a 20 percent rule that includes passive investment by institutional investors would frustrate this intent.

Small System Definition - Generally. CATA believes that the Commission's proposals are reasonable, and we support the comments of the NCTA with respect to the details of determining gross revenues, subscriber counts, and the procedures for obtaining a determination of small system status. Of primary importance, however, is that the Commission announce a willingness to apply its rules flexibly. It was CATA's position when the Commission was considering the notice leading to last year's "Small System Order," that the Commission permit a flexible waiver policy for systems not meeting the precise definition of "small" but whose characteristics, on the whole, were similar to small systems generally. We emphasized at that time and re-emphasize now, that the Commission cannot lose sight of the purpose of its small system regulations and should apply its rules accordingly. Thus, in the "Small System Order" the Commission announced a willingness to entertain petitions for special relief from systems not meeting a strict numerical definition of "small" but whose need for rate relief was the same. With the guidance provided by the Commission, the Cable Services Bureau had the flexibility to grant just such a petition for special relief filed by Insight Communications Company. (See, In the Matter of Insight Communications Company, L.P., Petition for Special Relief, Memorandum Opinion and Order, 11 FCC Rcd 1270, 1995)

In the Insight Order, the Bureau found that even though Continental Cablevision Inc. held a 34 percent interest in Insight, Insight gained "no meaningful access to financial resources" from this relationship. Furthermore, Continental exercised no control of Insight. The Commission pointed out that an affiliation of more than 20 percent with a company

serving more than 400,000 subscribers is presumed to create access to financial resources unavailable to "small systems," thus making it unnecessary to grant small system rate relief. Where, however, no significant financial benefit is derived from the affiliation the Bureau signalled its willingness to grant a waiver.

Similarly, although three Insight systems exceeded the 15,000 subscriber threshold that defines small systems, the Commission found that the characteristics of these systems did not differ from the systems with fewer subscribers. The Commission noted, for instance that the systems with over 15,000 subscribers had per subscriber premium revenues and subscriber densities like those of small systems, not large ones.

The Congress has changed -- expanded -- the definition of "small system." But whatever numbers and other criteria are used, the Commission must still have the flexibility to entertain waiver requests when it appears that the purpose of the small system regulations would be served. CATA once again urges the Commission to provide guidance that will make it possible to continue the enlightened approach taken in the Insight decision.

Transition Issues - Chaos Theory. The Commission has tentatively, albeit reluctantly, concluded that the language of the 1996 Act requires a transition to regulation as soon as a system no longer qualifies as "small" under subscriber or revenue criteria. CATA believes that whatever the Congressional language, there was no intent to create chaos. A system cannot seek long term financing without regulatory stability. Disruption in the marketplace cannot be a valid regulatory goal. In theory, of course, a 50,000 subscriber system could suddenly grow much larger as a result of political annexation, and a system in a large community can easily grow past the 50,000 subscriber limit, but, for the most part, it can be expected that growth, if it occurs, will be incremental and slight. Thus, if a system grows to

52,000 subscribers over some period, is any useful public purpose served by firing up the wheezing tin lizzie of regulation? This is particularly true, given the fact that in approximately two years CPST rate regulation disappears. If, in the interim, a small system grows beyond 50,000 subscribers, does it make any sense at all to begin regulation anew only to deregulate again a few months later? Is the public served by a game of regulatory yo-yo?


The same, of course, is true of a company growing beyond the 617,000 total subscriber threshold. Subsequent sale of some assets could then drop the company below that "magic number" again. Surely there would only be harm to the company and the public if regulation was withdrawn, then imposed, and then withdrawn again within a 24 month period. This is especially the case since the one percent calculation, as the Commission notes, will itself be changing annually - and will probably go up each year.

The Commission has already modified its rules, recognizing that most cable companies, and our subscribers, prefer that if rate changes are to be made, they be limited to a single change annually. Given that the CPST rate rules will be eliminated for all systems in march of 1999, it would make little sense to have a currently deregulated company find itself regulated for one rate adjustment cycle and then deregulated as to the CPST tier in subsequent years. Thus, we recommend that any transition to regulation from a current position of deregulation be over an extended period of time - more than 24 months, to assure stability with regard to the financial community and avoid confusion among consumers and regulators. We further recommend that any transition to regulation, triggered after March, 1997, only apply to the basictier. The Commission is entitled to presume that Congress did

not intend chaos in the marketplace.

Respectfully submitted,

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By: 
Stephen R. Effros
James H. Ewalt

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ASSOCIATION
3950 Chain Bridge Road
P.O. Box 1005
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